



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FCP/142460

PRELIMINARY RECITALS

Pursuant to a petition filed July 18, 2012, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee County Department of Family Care in regard to Medical Assistance/Family Care, a hearing was held on September 12, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's request for a new power wheelchair.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Vicky Serflek
Milw Cty Dept Family Care
Milwaukee, WI

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner's diagnoses include: arthritis, asthma, chronic obstructive pulmonary disease, chronic pain, coronary artery disease, depression, fibromyalgia, hypertension, neuropathy, osteopenia, osteoporosis and seizure disorder.

3. Petitioner's individual service plan (ISP) dated September 1, 2012 contains outcomes of remaining as independent as possible and independently accessing the community on a daily basis to continue spiritual, educational and social growth. See Exhibit 2.
4. Petitioner currently receives 7 hours/week of supportive home care and 7.75 hours/week of attendant care through Family Care. Petitioner receives 10 taxi tickets/month as well as 10 medical and 2 non-medical van rides/month from Family Care. When requested, Petitioner receives companion services to accompany her to medical appointments from Family Care.
5. Petitioner currently has a power wheelchair that was purchased for her by Medicaid in 2005. The chair is in need of repair. A determination has been made after assessment that it is not cost-effective to repair the chair due to its age and repair needs.
6. On May 30, 2012, the Petitioner requested a new power wheelchair with headrest and elevated leg rests from the agency.
7. On August 1, 2012, the agency denied the Petitioner's request for a power wheelchair

DISCUSSION

The Family Care (FC) program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. Whenever the local Family Care program decides that a person is ineligible for the program, or when the CMO denies a requested service, the client is allowed to file a local grievance and/or a fair hearing request.

The state code language on the scope of permissible services for FC reads as follows:

HFS 10.41 Family care services....

(2) SERVICES. Services provided under the family care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the department's contract, each CMO shall have available at least the services and support items covered under the home and community-based waivers under 42 USC 1396n(c) and ss.46.275, 46.277 and 46.278, Stat., the long-term support services and support items under the state's plan for medical assistance. In addition, a CMO may provide other services that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan.

Note: The services that typically will be required to be available include adaptive aids; ...home modification; ... personal care services; ...durable medical equipment...and community support program services.

Wis. Admin. Code §HFS 10.41(2).

The general legal guidance that pertains to determining the type and quantity of care services that must be placed in an individualized service plan (ISP) is as follows:

DHS 10.44 Standards for performance by CMOs.

...

(2) CASE MANAGEMENT STANDARDS. The CMO shall provide case management services that meet all of the following standards:

...

(f) The CMO, in partnership with the enrollee, shall develop an individual service plan for each enrollee, with the full participation of the enrollee and any family members or other representatives that the enrollee wishes to participate. ... The service plan shall meet all of the following conditions:

1. Reasonably and effectively addresses all of the long-term care needs and utilizes all enrollee strengths and informal supports identified in the comprehensive assessment under par. (e)1.
2. Reasonably and effectively addresses all of the enrollee's long-term care outcomes identified in the comprehensive assessment under par. (e)2 and assists the enrollee to be as self-reliant and autonomous as possible and desired by the enrollee.
3. Is cost-effective compared to alternative services or supports that could meet the same needs and achieve similar outcomes.
- ...

Wis. Admin. Code §DHS 10.44(2)(f).

A power wheelchair is an item of durable medical equipment which is covered under the state's plan for medical assistance if the criteria for the equipment is met. The state's plan for medical assistances addresses durable medical equipment, including wheelchairs, at Wis. Admin. Code §DHS 107.24. Criteria which must be met in order to have a wheelchair approved by the state medical assistance plan include a cost-benefit analysis and other criteria noted at DHS 107.24(4). The state plan further notes that durable medical equipment is not covered by the state plan if the requested equipment does not meet the criteria in DHS 107.24(5) including:

- (b) Services not covered by medicare for lack of medical necessity; . . .
- (d) Items not appropriate for home usage; . . .

Wis. Admin. Code § DHS 107.24(5).

Medicare regulations indicate that a power wheelchair will be found to be medically necessary for beneficiaries who are non-ambulatory, have severe weakness of upper extremities due to neurologic or muscular condition, and who cannot perform activities of daily living using other mobility assistance equipment. See CMS, US DHHS, Medicare coverage of Power Mobility Devices (PMDs): Power Wheelchairs and Power Operated Vehicles (POVs) (2009), available at http://www.cms.hhs.gov/MLNProducts/downloads/PMDFactSheet07_Quark19.pdf (detailing the requirements for obtaining Medicare coverage for an item of DME); and CMS, US DHHS Pub. 100-03 Medicare National Coverage Determinations, Transmittal 37, §280.3, available at <http://www.cms.gov/transmittals/downloads/R37NCD.pdf>; and Social Security Act §1819(b)(j)(2)(B), 42 USC §1395m(j)(2)(B)(2006), CMS US DHHS, Medicare Benefit Policy Manual, ch. 15 §110 (2010), available at <http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/bp102c15.pdf>

In its Notice of Action denying the power wheelchair, the agency noted that its decision was based on a determination that the Petitioner does not need the item to support the outcomes in her service plan and it is not the most cost-effective way to support her outcomes. Specifically, the agency noted that an Occupational Therapy assessment concluded that her needs could be met with a motorized scooter which the Petitioner indicated she is not willing to accept. In addition, the agency notes that the Petitioner is ambulatory and has demonstrated an ability to perform activities of daily living without mobility assistance equipment.

The agency testified at the hearing that on August 11, 2012, the inter-disciplinary team (IDT) conducted a home visit at the Petitioner's residence and observed the Petitioner ambulating within her home without the use of any assistive devices. On August 29, 2012, another home visit was conducted. There was testimony that the Petitioner was observed exiting a car without the use of any mobility device and the Petitioner did not complain of any pain though she had been out in the community for an extended period of time without any mobility device. It was noted that the Petitioner was unstable on her feet but was able to ambulate to her apartment.

The agency produced the Occupational Therapy assessment that was conducted with the Petitioner on May 21, 2012. The Petitioner told the OT that the current power wheelchair caused her physical discomfort and it did not move fast enough to get her safely across the street. The Petitioner reported that she utilized the power wheelchair on a daily basis to access the community. Petitioner's primary pain complaint was in her back and knees. She also complained of head pain radiating to her shoulders. For this reason, the Petitioner requested a head rest on the wheelchair. Petitioner also complained of feet pain spreading up her legs requiring her legs to be elevated while in the wheelchair. The OT noted that the Petitioner's strength in the bilateral upper extremities is 4/5. It was also noted that her hand grasp is symmetrical. Though Petitioner has bilateral wrist braces, she was not wearing them at the time of the assessment. The Petitioner reported numbness in her hands bilaterally as a result of carpal tunnel syndrome. The Petitioner also reported occasional dizziness with change in position. The OT noted no recent history of falls. The Petitioner was utilizing ankle supports at the time of the assessment. The OT observed the Petitioner ambulating in her apartment without the use of assistive devices. She observed the Petitioner transferring on and off the couch by using the arm of the couch for support. She was noted to be able to rise on the first attempt without difficulty.

Case notes produced by the agency indicate that the Petitioner has a wheeled walker with a seat and a quad cane. The Petitioner has told the IDT that her doctor has advised her not to use the wheeled walker because gripping or grasping the walker will have adverse consequences on her wrists/hands. On September 3, 2012, it was noted that the Petitioner does not use her power chair in her home due to clutter in the home.

The Petitioner was asked by the agency to try a power scooter for her mobility needs. Petitioner has refused to try a scooter. She testified at the hearing that her doctor indicated she should not use her hands for mobility devices due to the bilateral numbness and carpal tunnel syndrome in her wrists and hands. She testified that she has difficulty with fine motor skills such as grasping. For this reason, the Petitioner refused the motor scooter though the Petitioner conceded it might be possible to make modifications to a power scooter to meet her needs related to her wrists/hands. However, the Petitioner also testified that she needs a power wheelchair due to significant trunk instability. She concedes that she is ambulatory but testified that she can't ambulate long distance without assistance. It was noted by the Petitioner's representative that the agency requested an evaluation of the wheelchair only, not an evaluation of other mobility devices that might meet the Petitioner's needs.

Petitioner's nephew testified that any time he is with the Petitioner, she is in her wheelchair. She uses it to get to the bus or taxi. He testified that the clutter in her home has been cleared so that she can use the wheelchair in her home. He noted that she can walk in her home but she also uses the wheelchair. He testified it is not accurate to state that she does not have a history of falls. She has fallen in her home. He testified that she cannot clean her house. She has chronic pain from nerve damage. He confirmed that the Petitioner's doctor said she should not be using her hands to assist with ambulating because it will cause more injury to her hands. He testified that, in 2005, the Petitioner tried a scooter but she couldn't use her hands to operate it. Her hands have not improved since then. The Petitioner's niece testified that the Petitioner has good and bad days. Some days she is able to ambulate; others she is not able to ambulate.

At the end of testimony, the record was held open for the Petitioner and her representative to provide additional medical documentation and arguments to support her testimony. No documentation in support of her testimony was provided at the hearing. No additional information or documentation was received post-hearing from the Petitioner or her representative.

Based on the evidence presented at the hearing regarding the Petitioner's mobility status, I must conclude that the agency properly denied the Petitioner's request for a power wheelchair. There was evidence that the Petitioner's outcome of accessing the community can be met without the use of a power wheelchair at this time. The Petitioner was observed to be accessing the community without the use of her wheelchair. The Petitioner and her representatives testified that she has good and bad days and that she might not be able to access the community without mobility assistance every day. However, the Petitioner is still ambulatory. Also, while the Petitioner testified that weakness in her wrists/hands does not allow her to use them for mobility devices, there was no medical documentation of this and the OT assessment noted that the Petitioner has a symmetrical grasp and strength in her upper extremities that measures 4/5. Further, there was little evidence to rebut the agency's observations that the Petitioner is currently able to undertake most activities of daily living without assistance of her power wheelchair. Based on the weight of the evidence presented at the hearing, the Petitioner does not meet the criteria at this time for a power wheelchair.

CONCLUSIONS OF LAW

The agency properly denied the Petitioner's request for a power wheelchair.

THEREFORE, it is

ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

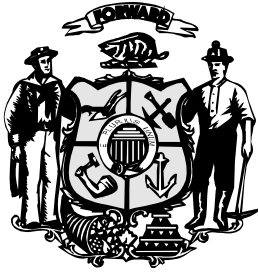
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 10th day of October, 2012

Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals

c: Department of Health Services - email
Milw Cty Dept Family Care, email - MCDFC



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 10, 2012.

Milw Cty Dept Family Care
Office of Family Care Expansion